(3)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

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Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

---

ASHOK KASHELKAR Case No. 2
Petitioner

- -against-

RUBIN & ROTHMAN ; et al
Respondents

---

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

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Appendix B - Conforming to Rule 14.1(i)(i)

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Petitioner - Ashok Kashelkar - Pro Se
6 Innington Court,
Spring Valley, NY 10977
Tel. (845) 426 2902

59 pp

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In the United States Supreme Court

Case No. 1
Ashok Kashelkar
Plaintiff \ Appellant \ Petitioner

-against-

Harold Y. MacCartney, Jr.; Debora J. Dillon; William R. Watson; Bruce Muldoon; MacCartney, MacCartney, Kerrigan & MacCartney; O'Connor, McGuiness, Conte, Doyle, Olsen & Collins; JOHN DOE No.1; JOHN DOE No.2 JANE DOE No.1; JANE DOE No.2
Defendants \ Appellees \ Respondents

---

Case No. 2

ASHOK KASHELKAR
Plaintiff \ Appellant \ Petitioner

-against-

RUBIN & ROTHMAN ; JOSEPH LATONA ; RUBIN LONG KEITH ROTHMAN; SCOTT RUMPH; HOUSEHOLD INTERNATIONAL, INC.
HOUSEHOLD RECOVERY SERVICES ; JOHN DOE No.1; JOHN DOE No.2
JANE DOE No.1; JANE DOE No.2

Defendants-Appellees \ Respondents

---

This submission is by..... Ashok Kashelkar-Pro Se
6 Innington Court
Spring Valley, NY 10977
Tel. (845) 426 2902

List of the Counsels for the Respondents

Case No. 1... Ashok Kashelkar v
Harold Y. MacCartney, Jr, et al

MacCartney, MacCartney, Kerrigan &MacCartney,
For Harold Y. MacCartney, Jr and the Firm
13 North Broadway
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Garcia & Stallone ESQ
For: Debora J. Dillon, William R. Watson;
O'Connor, McGuiness, Conte, Doyle,
Olsen & Collins
135 Pine Lawn Road- Suite 220 N
Melville NY 11747
Tel (631) 249 6644

Attorney General O The State Of New York
Charles F. Sanders. Asst. Atty Gen
For Bruce Muldoon
120 Broadway, New York 10271
Tel (212) 416 8594

---

Case No. 2 Ashok Kashelkar v Rubin & Rothman, et al

Cahill, Gordon & Reindel
Joseph Gershman
80 Pine Street, New York NY 10005
Tel ( 212 ) 701 3000

## Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "Court Orders" of The Court Of Appeals, for the Second Circuit as well as the District Court of Southern District of New York, White Plains, NY in both the cases, are appended, herein.

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This petitioner further states, that, the "seals" of the Courts are reproduced, to the best of my ability and are in BOX formats.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition and conforms to Rule 14.1(i)(i).

Spring Valley, NY

Dated July 22, 2001

Ashok Kashelkar
Pro Se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel. ( 845) 426 2902

**"Summary Order" and other orders in "MacCartney matter"..... Case No. 1**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the seventh day of November two thousand.

UNITED STATES COURT OF APPEALS
FILED
NOV.- 7 2000
Roseann B MacKechnie, Clerk
SECOND CIRCUIT

**Present:**

HONORABLE AMALYA L. KEARSE ,
HONORABLE PIERRE N. LEVAL,
HONORABLE SONIA SOTOMAYOR,
Circuit Judges.

---

ASHOK KASHELKAR ,
Plaintiff-Appellant, No:00-7090

- v. -

HAROLD Y. MacCARTNEY, JR.; DEBORA J. DILLON; WILLIAM R. WATSON; BRUCE MULDOON; MACCARTNEY, MACCARTNEY, KERRIGAN & MACCARTNEY; O I CONNOR, MCGUINNESS, CONTE, DOYLE, OLESON & COLLINS; JOHN DOE, No. 1; JANE DOE, No. 1; JOHN DOE, No.2; JANE DOE, No.2,

Defendants-Appellees.

---

Appearing for Appellant: Ashok Kashelkar pro se, Spring Valley, N.Y.

Appearing for Appellees Harold Y. MacCartney, Jr., MacCartney, MacCartney,

Kerrigan & MacCartney: David MacCartney, MacCartney, MacCartney, Kerrigan & MacCartney, Nyack, N.Y.

Appearing for Appellees Dillon, Watson, O'Connor, McGuiness, Conte, Doyle, Oleson & Collins: Robert Sylvan, Garcia & Stallone, Melville, N.Y.

Appearing for Appellee Muldoon: Charles F. Sanders, Ass't Att'y Gen., N.Y., N.Y.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the record from the United States District Court for the Southern District of New York, and was argued by plaintiff pro se, submitted by counsel for defendant Muldoon, and argued by counsel for

the other non-"Doe" defendants.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

We affirm substantially for the reasons stated in Judge McMahon's Order Granting Defendants' Motions To Dismiss And Or For Summary Judgment And Denying in Plaintiff's Motion To Strike Certain Motions By All Defendants Except Bruce Muldoon, dated December 22, 1999, except to the extent that order indicated that claims asserted under the Racketeer Influenced and Corrupt Organizations Act ("RICO") , 18 U.S.C. § 1961 et seq., are subject to a three-year statute of limitations, see Agency Holding Corp. v. Malley-Duff & Associates. Inc., 483 U.S. 143, 156 (1987) (RICO claims governed by four-year statute of limitations) . The district court's other grounds for dismissing plaintiff's RICO claims were correct.

We have considered all of plaintiff's contentions on this appeal and have found in them no basis for reversal. The judgment of the district court is affirmed.

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk

by: Sd_____
RALPH A. ANDERSON,
Deputy Clerk ACTING OPERATIONS MANAGER

---

**Since The Court of Appeals, "affirmed" the District Court Decision\Order and Judgement, for "Substantially the same reason", as the District Court, the District**

**Court Decision\ Order is appended below.**

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ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. District Court
Filed W. P.
Dec. 22, 1999
S. D. Of N. Y.

ASHOK KASHELKAR, 99 Civ. 5132 (CM)

Plaintiff,

-against-

HAROLD Y. MacCARTNEY, JR.; DEBORA J. DILLON; WILLIAM R. WATSON; BRUCE MULDOON; MACCARTNEY , MACCARTNEY, KERRIGAN & MACCARTNEY; O'CONNOR, MCGUINNESS, CONTE, DOYLE, OLSEN & COLLINS; JOHN DOE, NO.1; JANE DOE, NO.1; JOHN DOE, NO.2; and JANE DOE, NO.2,

Defendants.

----------x

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND/OR FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION TO STRIKE CERTAIN MOTIONS BY ALL DEFENDANTS EXCEPT BRUCE MULDOON

McMahon, J. :

In 1995, plaintiff pro se Ashok Kashelkar filed an action for damages in New York State Supreme Court, Rockland County , against a motorist named Harriet Levine, her husband, and GEICO, their insurer. The action arose out of an accident that occurred in 1992. The law firm of

MacCartney, MacCartney, Kerrigan & MacCartney represented the motorist defendants in that action. At some point in the litigation, cross-motions for summary judgment were filed, with plaintiff serving his motion on July 14, 1995, and the Levines serving theirs on July 20. On July17, Plaintiff wrote to the Court requesting a three-week extension of the return date to August 18 on a motion filed by the MacCartney firm to sever plaintiff s claim against the Levines from his claim against GEICO. In response, attorneys from the MacCartney firm and the firm of O'Connor, McGuinness, Conte, Doyle, Olsen & Collins, which represented GEICO, wrote CJ separate letters to the Court requesting that all pending motions be adjourned until August 18.
The Court appears to have granted those requests, as the parties' subsequently-filed Notices of Cross-Motion included return dates of August 18. Mr. Kashelkar appealed the dismissal ofhis suit through the New York State Unified Court System. Re lost at every turn.

Now Mr. Kashelkar has brought an action in this Court. The gravamen of his complaint is that the MacCartney and O'Connor firms, several attorneys of both, and the judge's law secretary denied him due process of law when they obtained and/or granted an adjournment behind plaintiffs back and effected the dismissal of his negligence complaint - a claim that seems somewhat bewildering in light of the fact that it was plaintiff who initiated the request for an adjournment to August 18. (See Letter dated July 15,1995 from plaintiff to Judge Meehan, MacCartney Exhibit N . ) As Mr . Kashelkar stated to this Court at oral argument, his complaint lies not with the fact that his cause of action was dismissed, but rather with the manner in which the loss occurred. (Tr. of Conference dated November 5, 1999, at 4.) Contending that defendants engaged in conspiracies to defraud him of his constitutional and civil rights and his property , he has

brought claims against them under the' Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961; 42 U.S.C. §§ 1981, 1983 and 1985; and the Fourteenth Amendment to the United States Constitution.

All the defendants have moved to dismiss the complaint. Their motions are disposed of as follows:

1. The motion to dismiss by defendant Bruce Muldoon, Law Secretary to the Ron. Robert R. Meehan, is granted. This Court lacks jurisdiction over Mr. Muldoon for actions he performed while acting in his official capacity as the law secretary to a New York State Supreme Court justice, because the State of New York is the real party in interest in such a suit, and the Eleventh Amendment bars suit against the State of New York. In addition, Mr. Kashelkar's challenge to the various rulings, both substantive and procedural, of the court of the Unified Court System of the State of New York in essence asks this Court to review state court decisions, which, of course, it has no power to do (see discussion of the Rooker-Feldman doctrine, below.) In addition, to the extent that plaintiff seeks damages against Mr . Muldoon, his complaint is barred by the doctrine of quasi-judicial immunity, which extends to court officials like Mr. Muldoon the same immunity that is absolutely enjoyed by judges when they exercise their judicial function. In this Circuit, law secretaries to state court judges benefit from quasi-judicial immunity. Oliva v. Heller, 839 F.2d 37,39 (2d Cir. 1988).

Moreover, all claims against Mr. Muldoon are time barred, since even on the most favorable reading of the complaint, plaintiffs claims against Mr. Muldoon arose no later that early 1996, when his negligence case was dismissed by the Rockland County Supreme Court more than three years before this action was filed.

Because the Court lacks jurisdiction to adjudicate this matter on both of these grounds, it need not and should not address the other grounds advanced by Mr. Muldoon in support of his motion to dismiss.

2. The motion to dismiss and/or for summary judgment made by defendants Harold Y. MacCartney, Jr. and the law firm of MacCartney, MacCartney, Kerrigan & MacCartney is granted.

The plaintiff's challenge to the underlying state court decision is jurisdictionally deficient and cannot be entertained by this Court under the so-called Rooker- Feldman doctrine, which precludes federal district courts from reviewing final judgments entered in state court proceedings. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Moreover, because the Second Circuit prohibits district courts from entertaining actions if they are "inextricably intertwined" with a challenge to the merits of an unreviewable state court determination, a plaintiff cannot evade Rooker-Feldman by casting his claim in the guise of a federal civil rights violation. See Davidson v. Garry , 956 F. Supp. 265, 268-69 (E. D. N.Y. [1996), Aff'd 112 F. 3d 503 (2d Cir. 1997). For this reason alone, the complaint must be dismissed against the MacCartney defendants, as the Court is without jurisdiction in this matter. See Fed. R. Civ. P. 12(b)(1).

It also appears from the record before me that plaintiff raised his claims of conspiracy and violation of due process before the state courts, where he lost resoundingly. Under controlling principles of former adjudication, Mr. Kashelkar cannot relitigate those issues now. See Polur v. Raffe, 912 F.2d 52,55 (2d Cir. 1990), cert. denied, 499 U.S. 937 (1991).

Third, the claims are time-barred, for the reasons set forth in connection with Mr. Muldoon ' s motion.

Turning to whether the pleading states a claim on which relief may be granted, which I consider as an alternative ground for dismissal in the event the Court's jurisdictional and former adjudication determinations are deemed erroneous: plaintiffs claims for violations of his civil rights and for denial of due process are dismissed because plaintiff fails to identify any constitutionally protected right that was violated. The filing of an answer containing denials of certain of plaintiff s allegations - the legal effect of which is simply to put a plaintiff to his proof as to each and every element of his claim - is perfectly proper under New York's Civil Practice Law and Rules, as is the filing of any and all affirmative defenses that may turn out to be justified by the facts. Plaintiff has no constitutional right to have motions served in accordance with the deadlines set forth in the CPLR or to have adjournments denied when he opposes them. It is well settled that mere irregularities or errors in a state court proceeding are insufficient to show a purposeful conspiracy to deprive a party of due process of law. See Young v. County of Fulton, 160 F.3d 899,902 (2d Cir. 1998); Skolnick v. Spolar. 317 F.2d 857 (7th Cir. 1963), cert. denied, 375 U.S. 904, rehearing denied, 375 U.S. 960 (1963).

As to the § 1983 claim, the Court notes that the MacCartney defendants are not state actors. They are private attorneys who were defending the interests of a client in an action brought by plaintiff in a state court. Plaintiff alleges no facts that would permit this Court to identify them with the authority of the state. When the complaint is parsed, it alleges no more than that the MacCartney and O'Connor defendants made a motion, wrote a letter to a law . secretary in order to obtain an adjournment and a single return date for all pending

motions, obtained the adjournment and thereafter won the case. This is insufficient as a matter of law to clothe them with the mantle of state actors.

As to the § 1985 claim, plaintiff has neither alleged any conspiratorial act with the particularity required nor set forth any factual allegation to support his conclusion that defendants conspired against him and he lost the case because he was an Indian who practices the Hindu religion. It appears from the record of proceedings in the state court that Mr. Kashelkar lost his case because he refused to submit an affidavit from his son, the driver of the car, setting forth his version of what occurred - this despite being told by Justice Meehan that he must do so or risk dismissal of his claim. Mr. Kashelkar's own allegations preclude him from asserting that he lost his case due to any race-ethnicity-religion based conspiracy.

His claim under § 1981 is also insufficient in that it fails to allege either facts supporting an inference of discriminatory intent or that Mr. Kashelkar was treated differently than white individuals who opposed requests for adjournment or who refused to submit affidavits that would create genuine issues of material fact in opposition to pending motions for summary judgment. Since Mr. Kashelkar's complaint reveals that the true gravamen of his federal action is to attack the merits of the state court adjudication, this Court does not grant him leave to replead, as he cannot "cure" what are incurable defects.

Mr. Kashelkar's alleged RICO violations also suffer from incurable pleading defects. First, he has not alleged that his commercial interests were injured by the alleged conspiracy against him. It has specifically been held that a RICO action does not lie against a state court judge and attorneys for their

alleged conspiracy to deny a party due process. See Hibbard v. Beniamin, Civ. A. No. 90-10361-WF, 1992 WL 300838 (D. Mass. Sep. 21, 1992) (citing Savastano v. Thompson Medical Co., 640 F. Supp. 1081,1087 (S. D. N.Y. 1986)). Nothing in the complaint would support an inference that the damage to plaintiff's car, which was being driven by his son at the time of the accident, related to any commercial interest of plaintiff. Second, plaintiff has not alleged predicate acts sufficient to sustain a RICO claim - the filing of an answer that denies certain of his allegations, the obtaining of an adjournment over plaintiff's opposition, and the dismissal of his action on the merits not qualifying as either mail or wire fraud. See D'Orange v. Feely, 877 F. Supp. 152,156 (S. D. N.Y. 1995); Morin v. Trupin. 711 F. Supp. 97, 104 (S. D. N.Y. 1989). Third, plaintiff does not allege a "pattern" of racketeering activity . Finally, the complaint is insufficiently particular - a defect that, in this particular case, cannot be cured by amendment.(fn1)

3. The O'Connor defendants have also moved for dismissal or summary judgment on the . same grounds as the MacCartney firm. For the reasons set forth above, their motion to dismiss and/or for summary judgment is granted as well.

4. Mr. Kashelkar has belatedly moved to strike the summary judgment motions of all defendants except Bruce Muldoon (who did not file a motion for summary judgment), ostensibly so that he can take discovery pursuant to Fed. R. Civ. P. 56(f). As discovery would not enable Mr. Kashelkar to resurrect any of his claims, which are dismissed pursuant to Rules 12(b)(1) and (6), his motion is denied, without the need for any response by defendants (fn2).

This constitutes the decision and order of the Court.

Dated: December 22, 1999

Sd. Colleen McMahon
U. S. D.J.

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Fn1 All of these grounds are fatal defects in plaintiff's pleading, and so dismissal is effected under Fed. R. Civ. P. 12(b)(6). The Court did review the parties' submissions (totaling over afoot of paper), but it is not necessary to treat the motion as one for summary judgment in order to dismiss the action. Nonetheless, Mr. Kashelkar was advised of his responsibilities under Rule 56 and submitted voluminous material in response thereto.

Fn 2 The Court has reviewed Mr. Kashelkar's statement concerning the death of his father-in law. The Court extends its condolences, and if Mr. Kashelkar was subjected to any discourtesy (such as the failure to return a telephone call by the Deputy Clerk), the Court tenders its apologies.

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**Denial of my MacCartney Petition for Rehearing-dated Feb. 09, 2001**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of February two thousand one.

**Present:**

Ho. Amalya L/ Kearse
Hon. Pierre N. Leval
Hon. Sonia Sotomayor

CIRCUIT JUDGES,

UNITED STATES COURT OF APPEALS
FILED
Feb. 09, 2001
ROSEANN B. MACKECHNIE, Clerk
SECOND CIRCUIT

---

Kashelkar
Appellant,

Docket No.00-7090

v

MacCartney
Appellee.

---

A petition for panel rehearing having been filed herein by ASHOK KASHELKAR.

Upon consideration thereof, it is Ordered that said petition be and it hereby is **DENIED.**

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk

By: Sd_____
Beth J. Meador
Administrative Attorney

pethrg_frm

**My motion to Enlarge time, to file petition for "En Banc" hearing and the denial of March 09, 2001.**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Number: 00-7090

---

Ashok Kashelkar
Plaintiff\Appellant
Harold Y. MacCartney, Jr. et al
Defendants\Appellees

UNITED STATES COURT OF APPEALS
Filed Feb. 21, 2001
ROSEANN B. MacKECHNIE, Clerk
SECOND CIRCUIT

---

**Motion for:** Enlarge time to serve\file Petition for En Banc Hearing

**MOTION BY:**

Ashok Kashelkar Pro Se
6 Innington Court, Spring Valley NY 10977

**OPPOSING COUNSEL:**

Please see attached list

Has consent of opposing counsel:

A. been sought? __Yes _x_ No
B . been obtained? __ Yes _x_No
Has service been effected? _x_Yes __ No

**Judge or agency whose order is being appealed**:
Judgement of Hon. McMahon-USDJ, the Summary Order of this Court, dated Nov. 07, 2000; affirming USDC Judgement and Summary Order of this Court, dated Feb.09, 2001

denying my petition for Panel Rehearing.

**Brief statement of the relief requested:** Request to "enlarge time" to March 09, 2001, for me to serve, file my petition for "En Banc" Hearing'

Sd _____
By: Ashok Kashelkar
Appearing for: (Name of Party) Pro Se
Appellant _x_ Plaintiff

Date: Feb. 17, 2001

**ORDER**

Before: Hon. Amalya L. Kearse, Hon. Pierre N. Leval, Hon. Sonia Sotomayor Circuit Judges

IT IS HEREBY ORDERED that the motion to extend time to file a *petition for rehearing* until March 09, 2001, be and it hereby is **DENIED.**

Date

UNITED STATES COURT OF APPEALS
Filed
March 09, 2001
ROSEANN B. MacKECHNIE, Clerk

For the Court:
ROSEANN B. MacKECHNIE, Clerk
By: Sd._____
Arthur M. Heller
Administrative Attorney

**Clerk's office issued Mandate in MacCartney Matter**

**MANDATE**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the seventh day of November two thousand.

UNITED STATES COURT OF APPEALS
FILED
NOV.- 7 2000
Roseann B MacKechnie, Clerk

**Present:**

HONORABLE AMALYA L. KEARSE ,
HONORABLE PIERRE N. LEVAL,
HONORABLE SONIA SOTOMAYOR,
Circuit Judges.

---

ASHOK KASHELKAR ,

Plaintiff-Appellant,

No.00-7090

- v. -

HAROLD Y. MacCARTNEY, JR.; DEBORA J. DILLON; WILLIAM R. WATSON; BRUCE MULDOON; MACCARTNEY, MACCARTNEY, KERRIGAN & MACCARTNEY; O I CONNOR, MCGUINNESS, CONTE, DOYLE, OLESON & COLLINS; JOHN DOE, No. 1; JANE DOE, No. 1; JOHN DOE, No.2; JANE DOE, No.2,

Defendants-Appellees.

---

Appearing for Appellant: Ashok Kashelkar pro se,
Spring Valley, N.Y.

Appearing for Appellees
Harold Y. MacCartney, Jr.,
MacCartney, MacCartney,
**MANDATE ISSUED 3/9/2001**

---

**Mandate is for itemized costs, payable to MacCartneys**

---

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

UNITED STATES COURT OF APPEALS
Filed
Nov. 28, 2000

Roseanne B. MacKechnie, Clerk
SECOND CIRCUIT

# ITEMIZED AND VERIFIED BILL OF COSTS

Docket No.00-7090

Kashelkar
v.
McCartney

Taxed in the amount of
$ 405.94
In favor of Appellee Harold Y. MacCartney, Jr, et al
For The Court
Roseanne B. MacKechnie, Clerk
Sd_____
Arthur M. Heller, Administrative Attorney
Date Nov. 28, 2000

Counsel for Defendants-Appellees, Harold Y. MacCartney, Jr., and MacCartney, MacCartney, Kerrigan & MacCartney respectfully submits, pursuant to Rule 39 c) of the Federal Rules of Appellate Procedure the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the Plaintiff-Appellant and in favor of the above Defendants-Appellees for insertion in the mandate.

Docketing Action_____
Costs of printing appendix (necessary copies -)_____
Costs of printing brief (necessary copies 18 ) $526.86 .
Costs of printing reply brief (necessary copies )_____
(VERIFICATION HERE)

STATE OF NEW YORK
COUNTY OF ROCKLAND

Sd._____
J. David MacCartney, JR.

J. DAVID MacCARTNEY, JR., am attorney admitted to practice before this Court, certifies as follows.

I am personally familiar with the costs for which this bill of costs is submitted. The costs were necessary to the prosecution of this appeal and actually were incurred.

Sworn to before me this
16th day of November, 2000. Sd._____
J. David MacCartney, JR.

Sd_____
NOTARY PUBLIC
SALLY MERGENTHALER
Notary Public, State of New York
No.4793245
Oualified in Rockland County
Commission Expires 1/31/2002
itembcost frm

---

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket Number: 00-7090

---

Ashok Kashelkar

Plaintiff\Appellant

Harold Y. MacCartney, Jr. et al

UNITED STATES
COURT OF APPEALS
Filed
Mar. 19, 2001
ROSEANN B.
MacKECHNIE, Clerk

Defendants\Appellees SECOND CIRCUIT

---

**Motion for:** Vacate, Stay, Modify it's Mandate and accept Petition for En Banc Hearing

**MOTION BY:** Ashok Kashelkar Pro Se
6 Innington Court, Spring Valley NY 10977

**OPPOSING COUNSEL:**
Please see attached list
Has consent of opposing counsel:
A. been sought? __Yes _x_ No
B . been obtained? __ Yes _x_No
Has service been effected? _x_Yes

**Judge or agency whose order is being appealed**: USDC SDNY Judgement under Appeal and this request specifically relates to the "Order of this Court", dated March.09, 2001 and the Mandate of March 09, 2001.

**Brief statement of the relief requested:** Vacate or modify the Mandate, stay enforcement of the Mandate and accept petition for En Banc Hearing and grant other relief as requested in the accompanying 8 page affidavit.

Sd _____
By: Ashok Kashelkar

Appellant _x_ Plaintiff
Appearing for: (Name of Party)
Pro Se

Date: March 16, 2001

**ORDER**

Before: Hon. Amalya L. Kearse, Hon. Pierre N. Leval, Hon.

Sonia Sotomayor Circuit Judges

IT IS HEREBY ORDERED that the motion be and it hereby is **DENIED.**

UNITED STATES COURT OF APPEALS
Filed
May 31, 2001
ROSEANN B. MacKECHNIE, Clerk

For the Court:
ROSEANN B. MacKECHNIE, Clerk
By: Sd._____
Beth J. Meador
Administrative Attorney

---

**Case No. 2.... Kashelkar v Rubin & Rothman**

**Supreme Court Rule 14.1(i)(i)**

**Summary Order of Second Circuit-affirming District Court Decision in Rubin & Rothman matter**

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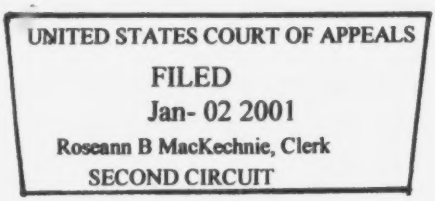
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED To THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF

COLLATERAL ESTOPPEL OR RES JUDICATA .

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 2nd day of Jan, two thousand and one




PRESENT: HON. DENNIS JACOBS,
HON. PIERRE N. LEVAL,
HON. ROBERT A. KATZMANN,
Circuit Judges.

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ASHOK KASHELKAR,

Plaintiff-Appellant,

-v.- 00-7751

RUBEN & ROTHMAN, JOSEPH LATONA, ROBIN LONG, KEITH ROTHMAN, SCOTT RUMPH, HOUSEHOLD INTERNATIONAL, INC., HOUSEHOLD BANK-FSB, HOUSEHOLD RECOVERY SERVICES, JOHN DOE #1, JANE DOE #1, JOHN DOE #2, JANE DOE #2, Defendants-Appellees.

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APPEARING FOR APPELLANT :
ASHOK KASHELKAR, pro se,
Spring Valley, N . Y .

APPEARING FOR APPELLEE:

JOSEPH GERSHMAN, New York, N.Y.,
Cahill, Gordon & Reindel (Thomas J.
Kavaler, on the brief) .

Appeal from the United States District Court for the Southern District of New York (McMahon, J. ) .

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be, and it hereby is, **AFFIRMED.**

Ashok Kashelkar, pro se, .appeals a judgment of the United States District Court for the Southern District of New York (McMahon, J. ) dismissing his complaint .

I.

In September 1999, Kashelkar filed a complaint against Household International, Inc., a Chicago-based holding company; two of its subsidiaries, Household Bank F. S . B. and Household Recovery Services; and Household's lawyers, the Law firm of Rubin & Rothman LLC, as well as four of its current or former lawyers (collectively "defendants") alleging fraud, extortion, and obstruction of justice, in .violation of 42 U.S.C. §§ 1981, 1983, 1985 and the Racketeering Influenced and Corrupt Organization Act 18 U.S.C. §§ 1992, et. Seq.

In May 2000, the district court dismissed Kashelkar's complaint on the grounds: that Kashelkar's civil rights and negligence claims were time-barred because they were not raised until October 1999, more than three years after the 1994 state court civil suit from which the claims arose; that Kashelkar's because they were filed beyond the four-year statute of limitations; that Kashelkar failed to state a claim of

discrimination under §§ 1981, 1983 and 1985; and that any other claims he may have asserted were legally deficient or inscrutable.

Finally, the district court denied Kashelkar's motion to amend his pleadings by adding more exhibits on the ground that the amendment would be futile.

Kashelkar's complaint alleged substantially the same claims as those he had raised in a previous. lawsuit against different defendants, Kashelkar v. MacCartnev, 79 F.Supp. 2d 370 (S. D. N.Y. 1999), which was dismissed by Judge McMahon for failure to state a claim. That dismissal was affirmed by this Court, Kashelkar v. MacCartney, No. 007090, 2000 WL 1678774 (2d Cir. 2000)

II.

On appeal, Kashelkar maintains that his complaint, with appendices, demonstrated that the defendants violated §§ 1981, 1983, 1985 and RICO, and that the district court decision was "factually wrong, " as well as "prejudicial, hostile, and discriminatory towards [him]," and should be reversed. Defendants maintain on appeal that, as the district court held, Kashelkar's claims were barred by the statutes of limitations and, in any event, were properly dismissed for Kashelkar's failure to state a claim upon which relief could be granted. The defendants point out that Kashelkar offered no facts to support his civil rights, RICO or negligence claims. Kashelkar filed a reply, which, to the extent it can be understood, restates his arguments on appeal and alleges that the district court's dismissal of his complaint was itself discriminatory.

This Court "reviews the dismissal of a complaint under Fed. R. Civ. P. 12(b) (6) de novo," Stuto v. Fleishman, 164 F.3d 820, 824 ( 2d Cir. 1999}; and the- denial of-a motion for

leave to amend for abuse of discretion, Jones v. New York State Div. of Military &-Naval Affairs, 166 F.3d 45, 49 (2d Cir. 1999) . Our review of the record confirms that the findings of the district court were correct with respect to all of Kashelkar's claims, as well as Kashelkar's motion to amend his complaint. We therefore affirm substantially for the reasons stated by the district court .

For the reasons set forth above, the judgment of the district court is hereby **AFFIRMED.**

FOR THE COURT:
Roseann B. MacKechnie, Clerk of Court

BY: Sd_____
Lucille Carr
[ emphasis added by AK ]

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**Since The Court of Appeals, "affirmed" the District Court Decision\Order and Judgement,"Substantially for the same reason", as the District Court, the District Court Decision\ Order is appended below.**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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99 Civ. 10281 (CM)

ASHOK K KASHELKAR,
Plaintiff,

-against-

U. S. District Ct
Filed W.P.
May 02, 2000
S. D. Of N. Y.

RUBIN & ROTHMAN, et al.,

Defendants.

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MEMORANDUM DECISION AND ORDER DISMISSING THE COMPLAINT AND DENYING THE CROSS-MOTION FOR LEAVE TO AMEND

McMahon, J. :

This is the second action to be filed with this Court (and assigned to this judge) arising out of Plaintiff Ashok Kashelkar's dissatisfaction with the resolution of his legal affairs. **In this first action, Kashelkar sued the judge,** the law secretary and the lawyers who were involved in a personal injury suit that arose out of a car accident involving his son. That lawsuit was dismissed by the Rockland County Supreme Court, which dismissal was affirmed by New York's appellate courts. Mr . Kashelkar alleged that his constitutional right to due process was violated by the handling of his case, specifically by the granting of an adjournment over his objection. This Court dismissed Plaintiffs frivolous complaint, which alleged inter alia, RICO violations and various constitutional torts. Kashelkar v. MacCartnev. No.99 Civ. 5132,1999 WL 1295986 (S. D. N.Y. Dec. 22,1999).

In this matter, Mr. Kashelkar has filed more or less the same complaint, this time against Household International, Inc., a Chicago-based holding company; two of its subsidiaries, Household Bank F .S.B. and Household Recovery Services; and Household's lawyers, the law firm of Rubin & Rothman LLC, as well as four of its current or former lawyers. Defendants' first sin was to sue Kashelkar to **recover money**

**he had borrowed from Household Bank** under a line of credit. (Household Action No. 1.) Their second sin was to make a pleading error in that case, naming a banking product, rather than the lending institution itself, as the Plaintiff, which led to the voiding of a judgment entered against Kashelkar in that action. Their third was to have the misfortune to purchase a credit card debt that Kashelkar owed to Chemical Bank and to bring a suit to recover those funds. (Household Action No.2.) They knew not with whom they were dealing.

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Mr. Kashelkar's complaints against Defendants are difficult to discern on the face of his 119 page (with 141 pages of exhibits) Complaint - even to a Court familiar with Plaintiffs mode of pleading. As best the Court can understand his theory, it is that Household has sued to collect the money owed by Kashelkar **because he is a member of a minority group** (of South Asian ancestry); that the naming of the wrong entity as the party Plaintiff in Household Action No. 1 constitutes RICO violations or frauds; and that the **Rubin & Rothman Defendants conspired with a state judge (again!)** in Household Action No. 1 to deny him the right to a trial in that case **(in which he ultimately prevailed without the need for a trial).** As these claims are no more substantial than the claims asserted in Plaintiffs prior action, for the reasons articulated by Defendants in their memorandum of law, the present claims, too, are dismissed with prejudice. As **there is no conceivable basis on which Plaintiff could state a viable claim** under the relevant Federal RICO, conspiracy and civil rights laws on the facts pleaded, Plaintiffs motion for leave to replead is also denied.

STATEMENT OF FACTS **(Fn1)**

The following statement of facts is distilled from the Complaint and its exhibits.

The 1994 Action

In April 1991, Plaintiff received a conditional check in the mail from Household Bank in the amount of $1,500. (Cplt. # 6 & Ex. P-01.) The check stated in writing that by executing and depositing it, "You accept our offer and agree to the terms and conditions of the HFC Cash Reserve Account Agreement Form 5537NY(4-91) which you received and read and which is incorporated herein by reference." (Cplt. Ex. P-06; Gershman Aff't Ex. 1.) A copy of the HFC Cash Reserve Account Agreement ("Cash Reserve Agreement") was enclosed with the check. (Cplt. Ex. P-06; Gershman Aff't Ex. 1.) The Cash Reserve Agreement provided, in pertinent part:

> If you accept our HFC Cash Reserve Account offer, this Agreement will govern the terms and conditions of the Account. We want you to understand how your account works. Read this carefully and complete and sign our Account Opener in order to indicate your acceptance of the Account. . . .
>
> AVAILABLE CREDIT . Your HFC Cash Reserve Account is a revolving line of credit through which you may obtain funds up to a credit limit we assign you.
>
> PROMISE TO PAY . You promise to pay Household: (a) amounts borrowed under this Agreement; (b ) Finance Charges, Administrative Charges (the late

**(Fn1)** All citations to Cplt. # in the Statement of Facts herein refer to the statement of facts section of the Complaint.



> charge and bad check charge), and other charges provided in this Agreement; (c) insurance charges, if any; ( d) collection costs permitted by applicable law, including reasonable attorneys' fees and court costs; and (e) amounts in excess of your credit limit that we may lend you, including Finance Charges.
>
> VARIABLE RATE. You agree that the monthly periodic rate used in determining your Finance Charge will be a variable rate which may change from month to month. The monthly periodic rate will be one-twelfth of the sum of the Prime Rate plus 9.9 percentage points. (Cplt. Ex. P-06; Gershrnan Aff't Ex. 1.)

On May 16, 1991, Plaintiff endorsed and deposited the check in his bank account (Cplt. Ex. P-06; Gershrnan Aff't Ex. 1 ), thereby accepting Household Bank's offer to open an HFC Cash Reserve Account. (Cplt.# 8.) Household Bank mailed Plaintiff a checkbook (Cplt. # 11), which he used to draw on his line of credit by depositing checks in his bank account. (Cplt. Ex. P-06.) Household Bank thereafter sent Plaintiff monthly statements showing how much money he had borrowed, the interest rate, and what his minimum payment was for that month. (Cplt. # 12.) For approximately two years, the arrangement appeared to work smoothly. Plaintiff drew on his line of credit from time to time by writing checks, received monthly statements, and made payments on the

balance he owed. (Cplt. #13.)

At some point in 1993, Plaintiff fell behind in his payments (Cplt. #17), and Household Bank sent Plaintiff several letters and made a number of telephone calls asking him to resume payments. (Cplt. # 15-17 & Ex. P-06.) In June of 1994, the law firm of Rubin & Rothman contacted Plaintiff on behalf of Household Bank by letter and telephone, asking that he contact the firm to discuss his outstanding debt. (Cplt. # 20.) Rubin & Rothman sent Plaintiff a second letter on September 7,1994. (Cplt. # 22.) Plaintiff did not respond, and Household Bank then served a complaint signed by Robin Long, commencing an action in New York State Supreme Court in Rockland County to recover the $3200 Plaintiff owed Household Bank. (Cplt. # 23-24 & Ex. P-05.)

In October 1994, Plaintiff filed an Answer and Counterclaim. and Household Bank replied in November 1994. (Cplt. # 26.) On April 15, 1995, Household Bank served a motion for summary judgment. (Cplt. # 28.) Plaintiff contends that service of this motion constituted a violation of his right to a trial. (Cplt.# 47.) Plaintiff filed responsive papers and cross-moved for summary judgment. (Cplt. # 37, 39, 53.) Household Bank opposed the cross-motion. (Cplt # 47.) On August 24, 1995, Justice Rudolph granted Household Bank's summary judgment motion and denied Plaintiff's cross-motion. (Cplt. # 56.)

Plaintiff appealed Justice Rudolph's decision in September 1995. (Cplt. # 59.) On October 10, 1995, Household Bank notified Plaintiff that it had obtained a judgment against him. (Cplt.# 64. ) On October 17, 1995, Household Bank served an Information Subpoena and Restraining Notices, signed by Keith Rothman, upon Chemical Bank and Bank of New York, the banks where Plaintiff maintained his personal and

business banking accounts. (Cplt. # 65.) Service of



the restraining orders caused $2,600 in Plaintiff's three accounts to be frozen. (Cplt. # 67.) Because his accounts were frozen, certain checks bounced. (Cplt. # 68.) Plaintiff claims he was charged $15 for each bounced check, and that in total the banks charged him $450 in fees for bounced checks. (Id.)

Plaintiff claims that from April-June 1995, **he was virtually precluded from working because he was devoting so much time to litigating the $3,200 action** with Household Bank. (Cplt. # '70.) Plaintiff further alleges that his inability to work, caused by his need to spend all of his waking hours preparing his defense, adversely affected his finances and precluded him from paying his automobile insurance premiums, which allegedly resulted in the cancellation of his insurance and the imposition of $360 in civil penalties by the New York State Department of Motor Vehicles. (Cplt. # 70-71.)

Plaintiff claims that he was also adversely affected by the freezing of his bank accounts, which resulted in a brief interruption of the payment of his life, disability and health insurance premiums. (Cplt. # 69, 74.) Plaintiff acknowledges that payment of his premiums had returned to normal by February 1996. (Cplt.# '74.)

On March 6, 1996, Plaintiff filed an Order to **Show Cause or a Motion to Vacate the Judgment, on the grounds that the complaint had incorrectly named the Plaintiff in the state court action.** (Cplt. # 95-97.) Because of an error in communication between Household Bank and Rubin &

Rothman, the Plaintiff in the state court action was identified as HFC Cash Reserve Div. of Household Bank, F. S. B. (Cplt. # 98 & Ex. P-36.) HFC Cash Reserve is a product provided by Household Bank, not a legal entity . (Cplt. Ex. P-36.) Household Bank filed a number of complaints around this time with the same infirmity. ( See Cplt. #114 & Exs. P-37 and P-48.) On March 15,1996, Household Bank acknowledged the error in papers submitted by Joseph Latona, and requested that the caption be amended to reflect the correct name of the entity to which Mr. Kashelkar owed money. (Cplt. # 98 & Ex. P-36.) On May 3, 1996, Justice Rudolph ruled that the pleading error was jurisdictional, ordered that the judgment and the restraining orders be vacated, and stated that Household Bank was free to re-file the lawsuit with the correct name in the caption. (Cplt. #118 & Ex. P-40.) Plaintiff has never repaid the $3,200 he owes Household Bank from his Cash Management Account. (Cplt. pp. 1-119.) On May 21, 1996, Plaintiff served his banks with copies of Judge Rudolph's decision so that his accounts would be un-frozen. (Cplt # 119 & Ex. P-41.)

The 1996 Action

In addition to reneging on his obligation to repay Household Bank, Plaintiff apparently stopped making payments on his Chemical Bank Master Card account in 1995. (Cplt Exs. P-49, P-5 1, P-52; Gershman Afl't Ex. 2.) Chemical Bank sold this account, among others, to Household Recovery. (Cplt Exs. P-49, P-5 1, P-52; Gershman Aff't Ex. 2.) In February 1996, Rubin & Rothman sent Plaintiff a letter informing him that they were representing Household Recovery in a claim against him for $7,880.18 arising out of this delinquent account (Cplt

# 132.) Household Recovery filed a complaint in New York State Supreme Court, signed by Scott Rumph, for recovery of the $7,880.18. (Cplt. Ex. # 49-52.) Plaintiff answered and counterclaimed, Household Recovery replied in a pleading signed by Joseph Latona (Cplt. Ex. P-50), Plaintiff demanded a bill of particulars, and Household Recovery filed a bill on October 31, 1996, also signed by Joseph Latona. (Cplt. Ex. P-52.) Plaintiff does not allege that any thing else has happened in the 1996 action. (Cplt. pp. 1-119.) Plaintiff does not allege any misstatements, misrepresentations or injuries in connection with the 1996 action.(Id.)

**Plaintiff, who alleges he is a Hindu born in India,** has now filed this action against Household Bank, Household Recovery, and their corporate parent, Household International, as well as the law firm of Rubin & Rothman, which represented the Household entities in the state court actions, and four Rubin & Rothman attorneys who worked on the two actions. (Cplt. pp.1-119. ) Plaintiff alleges violations of the federal civil rights laws, and state negligence law, (RICO) arising out of these **two garden-variety collection actions** against him. (Cplt. pp. 1-119.)

## DISCUSSION

### I. Plaintiffs Civil Rights and Negligence Claims Are Time-Barred

**Plaintiff's civil rights and negligence claims** (Counts 1- 7) are barred because they were not brought within the three-year statute of limitations. Suffolk County Water Authority v. J.D. Posillico. Inc.. 700 N.Y.S.2d 45, 46-47 (2d Dep't 1999) (affirming dismissal of negligence claim on the grounds that it was barred under 3-year statute of limitations for negligence claims); Parker v. DeBuono. No.98 Civ. 5765,

1999 WL 771365, at * 1 (S. D. N.Y. Sept. 28, 1999) ("The statute of limitations on §§ 1983 and 1985 claims is three years."); Ortiz v. Morgenthau. 772 F. Supp. 1430, 1432 (S. D. N. Y. 1991) ("The three-year limitations period is appropriate for actions pursuant to 42 U.S.C. §§ 1981 and 1985. . . .), aff'd. 962 F.2d 4 (2d Cir. 1992.).

Plaintiff's alleged civil rights claims arise solely out of the 1994 civil suit, **(Fn2)** and thus are time-barred because they accrued more than three years prior to the commencement of this action. Plaintiff filed this suit on October 5, 1999. Therefore, any civil rights claims which accrued prior to October 5, 1996 are time-barred. All of Plaintiffs civil rights claims arose prior to October 5, 1996.

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**Fn2** See Cplt. Civil Rights pg. 1- "Basis of CIVIL RIGHTS action ... All of the following statements relate to 1994 civil suit, in Rockland County, Under Index No.6239-94."

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In New York, federal civil rights actions are governed by a three-year statute of limitations. See Owens v. Okure. 488 U.S. 235, 250-51 (1989) (holding that New York statute of limitations for § 1983 actions was three years). "Federal civil rights claims accrue at the point in time when Plaintiff knows or has reason to know of the injury which is the basis of his action." Parker. 1999 WL 771365, at *1 (citation omitted). See also O'malley v. GTE Service Com..758 F.2d 818,820 (2d Cir. 1985). The proper focus is on the time of the discriminatory or injurious act, "not the point at which the consequences of the act become painful." Chardon v. Fernandez. 454 U.S. 6,8 (1981). Plaintiff should have been on notice of the allegedly discriminatory decision to sue him no

later than the date the suit was served on him -- September 28, 1994.**(Fn 3)** Similarly, with regard to the 1996 action, Plaintiff was presumably aware of any discriminatory or unlawful conduct towards him by Defendants as of the date he was served with the 1996 complaint, or on or about June 8, 1996, and therefore the three-year statute of limitations expired on or about June 8, 1999, approximately four months before this action was filed.( **Fn 4** )

**While Plaintiff does not clearly articulate a negligence claim**, any negligence arising out of the 1994 or 1996 actions would be similarly time-barred.

II. Plaintiff Fails to Plead Federal Civil Rights Claims

In addition to being time-barred, Plaintiff fails to state a claim under the federal civil rights statutes. Plaintiffs discrimination claims fail because they allege nothing more than that he is a member of a minority and he was sued. The Complaint is devoid of any facts that might indicate discriminatory intent, or that Plaintiff was treated differently than whites. If Plaintiff's allegations were sufficient to state a discrimination claim, any member of any minority would have a discrimination claim every time he was sued. The § 1983 allegations fail to state a claim because Plaintiff has not and cannot plead state action, nor has he identified a constitutionally protected right that was violated.

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**Fn 3** Even if a court were to determine that the claims did not accrue until the end of the lawsuit. when the judgment was vacated, the civil rights claims were time-barred as ofMay 3,1999. (Cplt. SOFA #118.)

**Fn 4** Similarly, many of the asserted RICO claims are

time-barred pursuant to the four-year statute of limitations for civil RICO actions. See Agency Holding Corp. v. Malley-Duff & Assocs.. 483 U.S. 143,156-57 (1987.). Plaintiff fied suit on October 5, 1999. Therefore, any RICO claims which accrued prior to October 5, 1995 are time-barred.

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A. Plaintiff Fails to State a Claim Under 42 U.S.C. 1981

To state a claim under § 1981, the complaint must allege that "(1) the Plaintiff is a member of a racial minority; (2) an intent to discriminate on the basis of race by the Defendant; and (3) the discrimination concerned one or more of the activities enumerated in the statute. . . ." Mian v. Donaldson Lufkin & Jenrette Securities Co . 7 F.3d 1085, 1087 (2d Cir. 1993). "In order to survive a motion to dismiss, the events of the intentional and purposeful discrimination, as well as the racial animus constituting the motivating factor for the Defendant's actions must be specifically pleaded in the complaint." Dove v. Fordham University. 56 F. Supp. 2d 330, 338 (S. D. N. Y. 1999)(dismissing pro se complaint because **it lacked "allegations of racial animus** and intentional discrimination necessary to state a cognizable claim under § 1981 ").

This claim (Count 1) must be dismissed for the same reasons an identical claim was dismissed by this Court in MacCartnev. on the grounds that **"it fails to allege either facts supporting an inference of discriminatory intent or that Mr. Kashelkar was treated differently** than white individuals who opposed requests for adjournment or who refused to submit affidavits that would create genuine issues of material fact in opposition to pending motions. . . II MacCartnev, 1999 WL 1295986, at *3. **The only facts**

**alleged are that Plaintiff is a non-white Hindu born in India. (Cplt. Civil Rights '22.)** The rest of the claim is conclusory. For example, the Complaint states "**[t]he CD [Defendants] have and demonstrated their deeply imbedded animosity towards 'non-whites' by conspiring against AK [Plaintiff], to defraud him of his rights and property , in the Rockland Proceeding.** . . CD determined, that AK being a 'non-white' must be 'stopped in track' from causing harm to the interests of the CD." (Cplt. Civil Rights # 22(c)-(d).)

B. Plaintiff Fails to State a Claim Under 42 U.S.C. 1983

Plaintiff's §1983 claim (Count 2) must be dismissed because (1) it does not, and cannot, plead state action, and (2) it fails to identify a constitutionally protected right. To state a claim under § 1983, Plaintiff must allege conduct, under color of state law, that deprived him of rights secured by the constitution or laws of the United States. See Gangemi v. Johnson. No.98 Civ. 8470, 1999 WL 77786 1, at * 1 (S. D. N . Y . Sept. 30, 1999). Plaintiff cannot plead state action in this case because all of the Defendants are private parties as a matter of law. "It is well established that attorneys are not state officers, but private persons, for the purpose of the Civil Rights Act." Stambler v. Dillon. 302 F. Supp. 1250,1255 (S. D. N. Y. 1969). Therefore, Plaintiff cannot satisfy the state action requirement by alleging that Rubin & Rothman or the individual lawyer Defendants were state actors. An identical argument by this Plaintiff was rejected by this Court in MacCartney. in which the Court determined that "[a]s to the §1983 claim, the Court notes that the MacCartney Defendants are not state actors. They are private attorneys who were defending the interests of a client in an actjon brought by Plaintiff in a state court. Plaintiff alleges no facts

that would permit this Court to identify them wjth the authority of the state." MacCartnev. 1999 WL 1295986, at *3.

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Nor does use of the New York State court system amount to state action. See Sundwall v. Weinstein & Assocs..No. 3:97 CV 405,1997 WL 507724, at *3 (D. Conn. Aug. 19, 1997) ("The only arguable state action referenced in Plaintiffs complaint is Defendants' use of the state and federal court systems. **However, the actions of attorneys in litigating cases *do not generally amount to conduct*** that can be attributed to the state.")(citing cases). Therefore, Plaintiffs attempt to allege state action via the lawyer Defendants' interactions with "state agent - Justice Rudolph (who was swayed by the R&R arguments over AK's)" is insufficient as a matter of law. (Cplt. Civil Rights # 51.)

Nor has Plaintiff identified a constitutionally protected right that has been violated. The essence of Plaintiff s civil rights claims appears to be **some kind of denial of access to the courts or First Amendment** claim arising out of the 1994 action in that (1) Rubin & Rothman did not consent to each additional adjournment he requested or every voluminous affidavit he sought to submit, and (2) that by *filing a meritorious summary judgment motion*, the Rubin & Rothman Defendants denied Plaintiff his constitutional right to a jury trial and infringed upon his First Amendment rights. **(Fn5)** (Cplt. Civil Rights # 1-51.) Plaintiff appears to be under the misunderstanding that one is entitled to a trial before a jury in every court case, without regard to whether there exist any triable issues of fact. **(Fn6)** But there is no unmitigated right to a trial in every case, as cases may be decided on a motion where there are no disputed issues of fact. **A litigant is not entitled to a jury trial simply**

**because he wants a forum to espouse his views.** Moreover, Plaintiff was afforded ample opportunity to submit briefs and affidavits to the court in the 1994 action, and he prevailed in that action -- albeit as a result of a pleading error, and not on the merits.

C. Plaintiff Fails to State a Claim Under 42 U.S.C. 1985

Plaintiff's §1985 claims (Counts 3-5) fail for the same reason these identical claims failed before this Court in MacCartney: "Plaintiff has **neither alleged any conspiratorial act** with the particularity required nor set forth any factual allegation to support his conclusion that Defendants conspired against him. . . because he was an Indian who practices the Hindu religion." MacCartney. 1999 WL 1295986, at *3.

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**Fn5** The § 1983 claim also alleges due process and equal protection violations, but these claims are summarily dismissed for Plaintiff's failure to allege state action.

**Fn6** See Cplt. Civil Rights '15 ("AK had the right to present all material evidence of admissible nature; **to expose counsel's perjury and misconduct of counsels and the Plaintiffs witnesses** - in Rockland Court proceeding, by conducting proceedings in open Court, by confronting, cross-examining and impeaching adverse witnesses, during requested hearing or trial; that being one of the most fundamental rights ... under the U.S. Constitution.").



Count 6 of the complaint appears to be a rehash of the five prior civil rights claims and, for the reasons stated above, is dismissed along with the other civil rights claims.

III. The Complaint Fails to State a Claim Under RICO

To state a claim under RICO, 18 U.S.C. §§ 1961 et seq., a plaintiff must allege (1) that the Defendant (2) through the commission of two or more "predicate acts" (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate or foreign commerce. Morin v. Trupin. 711 F. Supp. 97,105 (S. D. N.Y. 1989) (citation omitted). In addition, the plaintiff must allege that he was injured in his business or property by reason of a violation of § 1962. See 18 U.S.C. § 1964(c); Morin, 711 F. Supp. at 104. **Plaintiffs RICO claims (Counts 8-17) - purportedly brought pursuant to §§ 1962(a)-(d) - fail to satisfy these requirements, and therefore are dismissed.** The RICO claims' general failings will be discussed first, followed by some brief comments directed to the additional infirmities of each specific claim, §§ 1962(a)-(d).

A. **The Complaint Does Not Allege Commercial Injury**

Plaintiff **has not adequately alleged that he suffered injury to his "business or property" as required to state a RICO claim.** ~ MacCartnev. 1999 WL 1295986, at *3. The only injury **Plaintiff alleges is to his personal interests.** In fact, the only reference to his commercial interests in the entire complaint is that a business bank account was frozen for a few months - but Plaintiff does not allege any injury to his business as a result. (Cplt. SOFA # 65, 67.) Plaintiff alleges, inter alia, that he was forced to spend time and money to defend himself in the 1994 and 1996 lawsuits (Cplt. SOFA # 26, 34, 54, 73), that he experienced difficulties with his personal insurance coverage (Cplt. SOFA #69-71,74), and that his personal constitutional rights were in some way

infringed upon. (Cplt. SOFA # 47; Civil Rights # 1-51 .) **None of this constitutes commercial injury .**

B. The Complaint **Does Not Plead an Enterprise**

Plaintiffs RICO claims also fail because he has not pleaded an enterprise within the meaning of the RICO statute. To plead an enterprise, Plaintiff must allege facts showing "a group of persons associated together for a common purpose," which" is proved by evidence of an ongoing organization. . . and by evidence that the various associates function as a continuing unit." United States v. Turkette. 452 U.S. 576,583 (1981). Plaintiff has failed to allege an enterprise with sufficient particularity, and one that is separate and apart from the purported pattern of racketeering activity . See First Nationwide Bank v. Gelt Funding Com.. 820 F .Supp. 89,98 (S. D. N.Y. 1993), aff'd. 27 F.3d 763 (2d Cir. 1994), cert. denied. 513 U.S. 1079 (1995). **Plaintiff has not alleged and described a larger enterprise** of which each of the Defendants is a part; instead, he has alleged that Rubin & Rothman, Household International, Household Bank,



and Household Recovery are each an enterprise.**(Fn7)** Plaintiff s allegations run afoul of the well-established rule that RICO persons and the RICO enterprise must be distinct from one another. See Bennet v. United States Trust Company of New York, 770 F.2d 308, 315 (2d Cir. 1985); O & G Carriers. Inc. v. Smith, 799 F. Supp. 1528, 1543 (S. D. N.Y. 1992) (dismissing § 1962( d) claim on the grounds that it was vague and conclusory). **Here, Plaintiff has alleged that the RICO persons -- the Defendants -- are each a RICO enterprise.**

C. The Complaint Does Not Allege Predicate Acts

The RICO actions are also dismissed on the ground that the Complaint fails to allege adequately the commission of predicate acts necessary to constitute "racketeering activity." **Garden-variety pleading errors and the filing of routine motions** do not constitute RICO predicate acts. To hold otherwise would turn every state court lawsuit into a predicate for a subsequent federal RICO action.

( 1 ) Obstruction Of Justice. Plaintiff's claim that Defendants obstructed justice by litigating against him in state court fails to state a claim as a matter of law, because the federal obstruction of justice statute only applies to proceedings in federal court. See O'Malley v.New York City Transit Authority. 896 F.2d 704,707 (2d Cir. 1990). Therefore, counts 12 through 16 are dismissed. **(Fn8)**

(2) Extortion. Plaintiffs "extortion" allegations similarly fail as a matter of law. Plaintiff claims Defendants violated both the Hobbs Act (18 U.S.C. §1951) and state extortion statutes. (Cplt. # 68- 71; RICO # 45(5)(A)-(B).) Extortion under both federal and New York law requires "the obtaining of property of another, with his consent, induced either by wrongful use of actual or threatened force, violence or fear, or under color of official right." Feeley v. Whitman Corp. 65 F. Supp. 2d 164, 174 (S. D. N. Y. 1999). However, a claim for extortion does not lie when the Defendant had a good faith claim of right to the money sought. See O'Malley.supra 896 F.2d at

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**Fn7** See Cplt. SOFA # 57 - "R&R. HI, HB-FSB and HRS are 'enterprises' conforming to definition in Title 18 U.S.C. Section 1961(4) . . . ."

**Fn8** See also Sundwall. supra, 1997 WL 507724, at *2 ("Plaintiff's other alleged predicate acts involve mail fraud and obstruction of justice claims, both arising out of the Defendants' alleged fraudulent activities in representing their clients in Connecticut state and federal courts. These allegations are insufficient, as a matter of law, to constitute the necessary predicate acts under RICO."); Guild v. Palmieri. No.87 CV 1418,1989 WL 119519, at .1 ( E. D .N . Y . Sept. 29, 1989) ("If serving and filing an answer or a motion by any Defendant in a federal action could be considered obstruction of justice, this Court would be flooded with motions to amend complaints by Plaintiffs seeking to add RICO claims based upon mail fraud and obstruction of justice as soon as an answer was served. Such an interpretation of the RICO statute is untenable."), aff'd 904 F.2d 33 (2d Cir. 1990), Cert.denied. 498 U.S. 1049 (1991).



708-09; Goldberg v. Merrill Lynch. Pierce. Fenner & Smith. Inc., No.97 Civ. 8779, 1998 WL 50200, at * 5-6 (S. D. N.Y. Feb. 9, 1998). First, Plaintiff has no extortion claim because Household had a good faith claim to the money in both the 1994 and 1996 actions, as on each occasion the money sought belonged to Household; it had loaned funds to Plaintiff ( or was the assignee of the lender) which Plaintiff refused to repay. To find otherwise would mean that every time a party brings a legitimate lawsuit or seeks to enforce a valid judgment, the party would be guilty of extortion. Second, no property was given with Plaintiff's consent, as required by the statute. Plaintiff vigorously opposed both lawsuits. See Goldberg. 1998 WL 50200, at *5.

(3) Mail and Wire Fraud. Plaintiff claims that Defendants

violated the mail fraud statutes by using the mail to (I) send court papers, unsolicited checks, and invoices for legal services, and (2) receive payment for legal services and repayment of "illegally distributed funds through unsolicited checks." (Cplt. RICO # 15-21.) Plaintiff claims Defendants violated the wire fraud statute by transmitting and receiving "falsified" legal papers, receiving credit card payments, and making and receiving calls from customers. (Cplt. RICO # 22-24.) Far from pleading conduct that would constitute a violation of the mail and wire fraud statutes, the Complaint does nothing to negate the proposition that these actions were completely lawful, and constituted nothing more than the legitimate conduct of attorneys representing their clients in pending litigation, and Household conducting lawful lending activities. This Court has soundly rejected the contention that such conduct by attorneys can constitute mail or wire fraud. See Morin. 111 F. Supp. at 105 (dismissing a similar claim and holding that "Congress could not have intended that the mail fraud statute sweep up *correspondence between attorneys,* dealing at arm's length on behalf of their parties, concerning an issue in pending litigation.... **Subjecting the letters in issue to the mail fraud statute would chill an attorney's efforts and duty to represent his or her client in the course of pending litigation.**"); D'Orange v. Feelv. 877 F. Supp. 152, 156 (S. D. N.Y. 1995) (dismissing RICO claims against attorneys who had allegedly sent fraudulent accountings through the mail and holding that the attorney's actions "cannot be considered predicate acts because they constitute legitimate conduct of attorneys acting on behalf of a client in the course of pending litigation"). These allegations fail to plead RICO predicate acts for the additional reason that they fail to satisfy the pleading requirements of a fraud claim. **(Fn9)** Federal Rule of Civil Procedure 9(b ) states that in averments of fraud, "the circumstances constituting fraud. . . shall be stated with

particularity". Fed. R. Civ. P. 9(b). "Rule 9(b) . . . applies to civil RICO claims for which fraud is the predicate illegal act. In the RICO context, Rule 9(b) calls for the complaint to specify the statements it claims were false or misleading, give particulars as to

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**Fn9** For example, Plaintiff attempts to plead wire fraud by stating " HB-FSB, HRS and other entities affiliated with III, millions of times over the similar long period, in return, have received payments from the "unwitting consumes" [sic] by way of the consumers using their credit cards, for payments; giving their consents for such payments, under duress; receiving from and making Interstate Telephone calls to ill, HB-FSB & HRS and other entities; violating 18 USCS 1343. . ." (Cplt. RICO # 23.)



the respect in which Plaintiffs contend the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements." Gerstenfeld v. Nitsberg, 190 F. R. D. 127,130-31 (S. D. N.Y. 1999) (citations and quotations omitted).

In addition, the Plaintiff must (1) identify the purpose of the mailing within the Defendant's fraudulent scheme and (2) allege facts that give rise to a strong inference of fraudulent intent. See Id. Plaintiff does not satisfy any of these requirements. Plaintiff gives no particulars about the alleged statements, what they were, who made them, when and where they were made, what role they played in the scheme, or any facts which give rise to an inference of fraudulent tent. See MacCartney 1999 WL 1295986, at * 3 (dismissing mail

and wire fraud claims for insufficient particularity). Last, Plaintiff must allege reliance to establish injury "by reason of any predicate act of mail or wire fraud, which he does not. DiFiore v. DiLorenzo, 1997 WL 722697, at *6 (E. D. N. Y. Sept. 17, 1997). **"The predicate acts of an alleged RICO violation must then be the proximate cause of the Plaintiffs injury."** Id. Here, as in DiFiore."Plaintiffs have alleged no facts to show that any acts of **mail fraud were relied on by the Plaintiffs** in any way that was a substantial factor causing their injury" Id., and thus the RICO claims based on mail and wire fraud are also dismissed.

( 4) The Travel Act. Plaintiff has not plead a violation of the Travel Act, 18 U.S.C. § 1952, because he has not plead that Defendants engaged in "unlawful activity" as that term is defined for purposes of the Travel Act. See 18 U .S.C. § 1952(b ). The only act mentioned in the complaint which would constitute unlawful activity for purposes of The Travel Act is extortion, and for the reasons stated above, Plaintiff has not plead extortion. **(Fn10)**

D. Additional RICO Infirmities

**The Complaint also fails to state a RICO claim for reasons unique to each subsection of § 1962.** To state a violation of§ 1962(a), Plaintiff must allege that Defendants used income received from a pattern of racketeering activity to acquire an interest in or establish an enterprise engaged in or affecting interstate commerce. **The Complaint fails to allege that Defendants received income from racketeering activity,** acquired an interest in an enterprise, or established an enterprise. Therefore, for the reasons mentioned above, no violation of §1962(a) has been stated. See Morin. 835 F. Supp. 126, 131-32 holding that to state a §1962(a) claim Plaintiff must allege that the Defendants "received income

derived from a pattern of racketeering activity and invested it in the acquisition of any interest in, or the establishment or operation of, a RICO enterprise"). No violation of § 1962(b ) is stated because Plaintiff fails to allege "that the Defendant acquired or maintained an interest in a RICO enterprise through a pattern of

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**Fn10** 18 U.S.C. §§ 241, 242, 245, and 39 U.S.C. § 3009, are not predicate acts under the RICO statute. See 18 U.S.C. §1961(1). Nor are any of the alleged state statutory "criminal violations" RICO predicate acts either (Cplt. Criminal Violations # 24-25), **except possibly extortion**, which has been addressed above.



racketeering activity." Morin, 835 F. Supp. at 133; Dornberger v. Metropolitan Life Insurance Co.; 961 F. Supp. 506, 524-25 (S. D. N. Y. 1997) ("[T]o state a claim under §1962(b), a Plaintiff must allege an injury by reason of the Defendant's acquisition or maintenance of an interest in or control of an enterprise."). The Complaint fails to allege a violation of § 1962( c ) because it does not allege in anything other than conclusory terms that any of the Defendants conducted or participated in the enterprise. See Reeves v. Ernst & Young, 507 U.S. 170, 177-79 (1993). Moreover, the Rubin & Rothman Defendants are alleged to have done nothing more than provide legal serv ices to Household Bank and Household Recovery, which has been held to be insufficient to meet the "operation and management" test under Reeves. See Morin, 835 F. Supp. at 133-36 (S. D. N.Y. 1993). Last, the complaint fails to allege a violation of§1962(d) because it does not adequately allege a violation of §§ 1962( a)-( c ), nor does it allege a conspiracy to violate §§1962(a)-(c), except in conclusory terms, which is

insufficient to state a claim. See O & G Carriers. 799 F. Supp. at 1543 (dismissing § 1962( d) claim on the grounds that it was vague and conclusory).

In addition, the RICO claims are dismissed as to Rothman and Rumph **because these individuals are only alleged to have committed one act**, and therefore **cannot have committed the two predicate acts** necessary to state "racketeering activity", a required element in a RICO claim. See Lee v. Kim. No.97 Civ. 4406,1998 WL 20003, at *3 (S. D. N.Y. Ian. 20,1998). Rumph is alleged to have signed the 1996 Complaint (Cplt. SOFA # 154), while Rothman is alleged to have signed the information subpoena and restraining notices served on Kashelkar's banks. (Cplt. SOFA # 65.) Moreover, the complaint is utterly devoid of any allegations concerning Household International (a remote holding company), nor are there any allegations suggesting that it would be appropriate to pierce the corporate veil, and therefore the complaint must be dismissed as to it.
Last, **Plaintiff has no standing to complain about alleged misrepresentations made to others,** and therefore paragraphs 136-147 of the Statement of Facts, and the exhibits associated therewith, are stricken pursuant to Fed. R. Civ. P. 12(f).

IV. Plaintiffs "Statutory Negligence" Claim and Other Claims

This claim (Count 7) is completely indecipherable, and is dismissed for vagueness. It states, in part, "[t]he CD wilfully flouted letter and spirit of every law, rule, regulation and provisions of the U.S. and well as New York Constitution, at will." (Cplt # 51.) To the extent the complaint attempts to state a fraud claim (Cplt Conspiracy to Defraud), it fails for, among other reasons, its failure to plead either (1) detrimental

reliance or (2) facts which give rise to a strong inference of fraudulent intent See Lama Holding Co. v. Smith Barney Inc., 88 N. Y.2d 413,421, 646 N. Y .S.2d 76,80 (1996)(stating that elements of a fraud claim are "a misrepresentation or a material omission of fact which was false and known to be false by Defendant, made for the purpose of inducing the other party to rely on it, justifiable reliance of the other party on the misrepresentation or material omission, and injury."); Fed. R. Civ .P . 9(b ). Plaintiff does not and cannot plead reliance because all of the alleged "misrepresentations appeared in legal papers in the course of adversary litigation; they were not statements made by Household upon which Plaintiff relied or changed his position in reliance thereon. (Cplt. SOFA # 123-134.) See



Nineteen New York Properties limited Partnership v. 535 5th Operating Inc. 211 A.D.2d 411, 412-13,621 N.Y.S.2d 42,43 (lst Dept. 1995) ("The only fraud alleged is with respect to statements made in the complaint and in support of Plaintiffs motion; there could be no detrimental reliance on such statements."). The particularity issue has already been addressed in the mail and wire fraud section above, and the same failings apply here, particularly the absence of facts giving rise to an inference of fraudulent intent and an explanation as to why many of these statements are false.

The Complaint does not plead a violation of39 U.S.C. §3009 by Household because that statute concerns the mailing of unsolicited merchandise to customers, not unsolicited offers of credit. Household did not send Plaintiff any merchandise -- it sent him an offer to open a line of credit, which he was free to accept or reject. To accept, Plaintiff had to endorse and deposit the check which had been sent to him. The federal

courts have held that this statute, by its terms, does not apply to such offers. In a similar case involving life insurance, Kipperman v. Academy life Insurance Co. 554 F.2d 377, 380-381 (9th Cir. 1977), the Ninth Circuit rejected the contention that an unsolicited insurance policy, which Plaintiff was free to accept or reject, was merchandise within the meaning of 39 U.S.C. § 3009.

V. Motion for Leave to Amend

Plaintiffs cross-motion for leave to amend the complaint is denied. Because the claims are all time-barred, it would be futile to permit amendment. Moreover, this Court is convinced that Plaintiff cannot state any claim against these Defendants, under either Federal or State law, based on the facts alleged in the Complaint.

CONCLUSION

The Court directs the Clerk to enter judgment dismissing the Complaint with prejudice, with costs on the motion. **There being no contractual basis for an award of attorneys' fees** in this case (which is not a collection case), Defendants' motion for attorneys' fees is denied.

Dated: April 29, 2000

Sd Colleen McMahon
U. S. D J.



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**Following conforms to Supreme Court Rule 14.1(i)(iii)**

**CA2NY Order denying Panel Rehearing**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of February two thousand one.

**Present:**

Hon. Dennis Jacobs
Hon. Pierre N. Leval
Hon. Robert A. Katzmann

CIRCUIT JUDGES,

UNITED STATES COURT OF APPEALS
FILED
Feb. 09, 2001
ROSEANN B. MACKECHNIE, Clerk
SECOND CIRCUIT

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Kashelkar
Appellant,

v.

Docket No.00-7751

Rubin & Rothman
Appellee.

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A petition for panel rehearing having been filed herein by ASHOK KASHELKAR. Upon consideration thereof, it is Ordered that said petition be and it hereby is **DENIED.**

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk
By: Sd_____
Beth J. Meador
Administrative Attorney

pethrg_frm

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**Following conforms to Supreme Court Rule 14.1(i)(iii)**

**Motion Granted, to Circulate "En Banc" Petition**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room I 7O2
New York. NY lOOO7

**MOTION INFORMATION FORM**

CLARIFICATION

Docket No. 00- 7751

UNITED STATES COURT OF APPEALS
FILED
Apr 6 2001
ROSEANN B. MacKECHNIE, Clerk
SECOND CIRCUIT

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KASHELKAR v. RUBIN & ROTHMAN

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Ashok Kashelkar
6 Innington Court
Spring Valley, NY 10977

| | Yes | No |
|---|---|---|
| Consent sought from adversary(ies)? | ___ | ___ |
| Consent obtained from adversary(ies)? | ___ | ___ |
| Is oral argument desired? | ___ | ___ |

**-ORDER-**

BEFORE: Hon. Dennis Jacobs,
Hon. Pierre N. Leval,
Hon. Robert A. Katzmann,
Circuit Judges

**IT IS HEREBY ORDERED** that the motion for leave to file the petition for rehearing en banc dated March 9, 2001, be **GRANTED. IT IS FURTHER ORDERED** that the requests for further explanation and for certification to the U. S. Supreme Court are: **DENIED**. The motion to grant the petition for rehearing en banc shall be determined by the full Court based on the petition: therefore the motion to grant rehearing en banc is **DENIED**.

ROSEANN B. MacKECHNIE, Clerk
By: Sd_____
Beth J. Meador, Administrative Attorney

Date: APR -6 2001

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**Following conforms to Supreme Court Rule 14.1(i)(iii)**

**Court Of Appeals Decision-not to consider my Petition for En Banc Hearing**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the sixteenth day of May two thousand one.

Docket No. 00-7751

Kashelkar
Appellant
v

Rubin & Rothman
Appellee

UNITED STATES COURT OF APPEALS
FILED
May 16, 2001
ROSEANN B. MACKECHNIE, Clerk
SECOND CIRCUIT

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by
the appellant ASHOK KASHELKAR

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the Court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk

By: Sd_____
Beth J. Meador
Administrative Attorney

Enbancdn_frm

Prepared and submitted by

Petitioner- Ashok Kashelkar Pro Se
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